

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 13-36-0060

Parcel No. 3-161

Finders Keepers Real Estate, LLC

Appellant,

vs.

Fremont County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 20, 2015. Daniel Manning of Lillis O'Malley Law Firm, Des Moines, represented Finders Keepers Real Estate, LLC. Brett Ryan of Watson and Ryan, PLC, Council Bluffs, represented the Board of Review.

Finders Keepers Real Estate, LLC, is a legal entity owned by Jim and Alicia Chrastil who operate an antique store at 2085 Crossroads Drive, Percival, Iowa. The property is a commercially classified, metal retail store built in 2004, with a gross building area of 13,300 square feet. The property also has 768 square-foot covered patio and 8000 square feet of concrete paving. The site is 1-acre. (Ex. A).

The property's January 1, 2013, assessment was \$567,630, allocated as \$150,000 in land value and \$417,630 to improvement value. Finders Keepers protested to the Board of Review claiming the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2). It asserted the correct market value was \$300,000. The Board of Review denied the petition.

Finders Keepers then appealed to PAAB.

Findings of Fact

The Chrastils assert the Finders Keepers property is over assessed. Essentially, they believe that the significant 2011 flooding of the property impacted the property's value indefinitely.

All of the witnesses testified regarding flood. In early June 2011, the property had to be vacated due to imminent flooding from the Missouri River; a berm was built around the building to protect it from the River's direct flow. As expected, a levee breached upstream and the entire area flooded. The Finders Keepers property had standing water in it for several months; however, the berm protected the property from the direct flow of the water. The floodwaters receded sometime in early to mid-October. After that, the berm was removed and repairs were made to the improvements. Finders Keepers re-opened for business in late November 2011.

The subject property is not located in a flood zone; the flooding was the result of breach of a levee upstream. Since that time, the levees were rebuilt with a larger system and backup berm. The weight of the testimony suggests the property is not likely to flood again.

In support of its argument, Finders Keepers called several witness including an owner, Alicia Chrastil; an investor/developer, Les Robbins; and appraiser Nick Dizona of Real Property Appraisal, PC, Omaha, Nebraska who completed an appraisal of the subject property. (Ex. 1).

The Board of Review called the Fremont County Assessor and appraiser Russ Manternach, Commercial Appraisers of Iowa, Inc, West Des Moines, as witnesses. (Exhibit D). Manternach's appraisal also concludes a value lower than the assessment. The Board of Review asserts Manternach's appraisal the correct reflection of the Finders Keepers' property value as of the assessment.

The two appraisers' opinions of value are set forth in the chart below.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Dizona	\$332,500	Not Developed	Not Developed	\$332,500
Manternach	\$545,000	\$553,000	\$546,000	\$550,000

Les Robbins Testimony

Les Robbins a CPA and real estate developer, and is also Alicia Chrastil's brother. He was a partner in creating the Crossroad Development where the subject property is located. Crossroads is a real estate development located near the intersection of Interstate 29 and Highway 2, in southwest Iowa. He explained that he sold the subject lot in 2004 to his sister for \$150,000; she then built Finders Keepers. The last lot that sold in the development was in 2006 for \$175,000. That property is essentially now a failed venture.

Robbins testified regarding the flood of 2011. Due to the flood and having to close the store, Robbins explained that Chrastil was unable to make the mortgage payments on the subject property. Ultimately, with Robbins' help the loan was re-structured. (Ex. 6-9). Effectively, Robbins assumed the loan based on a short-sale scenario. Robbins asserted the bank wrote-off approximately \$250,000 when he bought out the remainder of the loan.

Alicia Chrastil Testimony

Chrastil, along with her husband, owns Finders Keepers. She explained how Robbins assisted her in buying and developing the subject property, and the flood's impact on the property.

When questioned by the Board of Review if she had flood insurance, Chrastil indicated she did and it covered about \$56,000 of the flood preparation and subsequent clean up. She noted there had been some damage to drywall and doors that needed repaired, as well as some painting and other cosmetic damage including some cracked floors and bent siding. The insurance policy covered all of these items, with the exception of some interior "fencing"; however, the fencing was personal property and not part of the real estate. As of the 2013 assessment date, all of these items were repaired.

Karen Berry Testimony

Fremont County Assessor Karen Berry testified for the Board of Review and provided a background of the assessment. Berry was aware of the 2011 flood. She testified that, to her knowledge, the subject property was repaired after the flood and as of January 1, 2013, it did not have any deferred maintenance.

Berry testified that if a property had flood damaged that was not repaired by January 1, 2012, then that property had a percentage decrease based on the unfinished state of the repairs. The subject property, however, was repaired by this date. She also noted that in 2013 all of Fremont County was re-valued.

Appraisals

The Dizona Appraisal

Dizona testified regarding his background and knowledge of the 2011 flood, as well as his opinion of the impact the flood had on the Finders Keepers property. In Dizona's opinion, the farther removed the flooding event is, the less impact it will have on the value of the property; however, he thinks the subject property was still impacted by this event as of the 2013 assessment.

Dizona developed a Restricted Appraisal and relied solely on the sales comparison approach to value. His conclusions were as follows.

Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
\$332,500	Not Developed	Not Developed	\$332,500

Dizona did not develop the cost approach because, in his opinion, the property's flooding would impact any adjustments in determining the improvement's cost and render the conclusion unreliable.

Dizona's report only provides his conclusion of value with no rationale or analysis of how he arrived at those conclusions. He included four properties that he identified as comparable sales. (Ex. 1, pp 21-23). However, he provides no adjustments to the sales and no narrative explanation of the analysis he purports to have conducted. The

comparable properties had sale prices ranging from \$55,000 to \$450,000. (Ex. 1, p. 24). Further, he testified that he adjusted the comparable properties based on the impact of the flooding to the subject property; however, he also testified that as of 2013 the subject property had no known physical damage because of the 2011 flood. When questioned if he had any evidence of existing damage to the subject property, as of the assessment date, he testified that he did not.

Additionally, Dizona testified that he gave very little or no weight to sales 1, 2, and 3. He gave most weight to Sale 4, which is located in Plattsmouth, Nebraska and sold for \$250,000. Dizona's opinion of value is \$332,500; there is no analysis how he concluded \$332,500 based solely on Sale 4. With no analysis presented, we are unable to determine the reasonableness of this conclusion.

Ultimately, we do not find it necessary to recite all of Dizona's testimony because we do not find it reliable or relevant. A Restricted Appraisal Report is for client use only; in this case, the owner of Finders Keepers. Dizona testified he was aware this report would be submitted to this Board for the purposes of assessment appeal. "When the intended users include parties other than the client, an Appraisal Report must be provided." THE APPRAISAL INSTITUTE, THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE U-21, lines 659-660 (2014-15 ed.).

The Manternach Appraisal

Manternach testified that he was aware of the June 2011 flooding that affected the subject property. He further testified that he did not find any evidence that the improvements were unsound in any way because of the flood as of the assessment date.

Manternach developed all three approaches to value: sales, cost, and income. His conclusions were as follows.

Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
\$545,000	\$553,000	\$546,000	\$550,000

In developing the cost approach, Manternach considered six land sales. (Ex. D, p. 32). He testified he was unable to find comparable site sales in Fremont County; one of the most recent sales he found was in 2008, which he felt was too dated to consider. In his opinion, the land sales he submitted offer similar traffic counts to the subject property. Finders Keepers was critical of the land sales because none were located within even one-hundred miles of the subject property. Manternach asserted that he considered any differences in location between the sales and the subject site. After adjustment for differences, he determined an opinion of value for the subject site of \$98,000. He relied on MARSHALL VALUATION SERVICE to develop the replacement cost new (RCN) of the improvements. He depreciated the RCN 23% for physical depreciation and 25% for economic obsolescence. Manternach asserts there has been a reduced demand for retail properties in the subject's location, necessitating the economic obsolescence adjustments. (Ex. D, p. 35). His conclusion of value by the cost approach is \$546,000. (Ex. D, Amended p. 37).

Manternach submitted five properties for the sales comparison approach. These sales are summarized in the following chart.

	Date of Sale	Sale Price	Gross Building Area (GBA)	SP/SF	Year Built	Adjusted Price/SF
Subject -Percival	N/A	N/A	13,300	N/A	2004	N/A
1 - Webster City	Sep-12	\$197,000	4800	\$41.04	1994	\$40.16
2 - Bloomfield	Sep-11	\$215,000	7500	\$28.67	1994	\$33.35
3 - Marshalltown	Dec-11	\$375,000	8100	\$46.30	1994	\$40.37
4 - Manchester	Sep-13	\$800,000	23,336	\$34.28	1990	\$39.24
5 - Nebraska City, NE	Mar-11	\$195,000	4860	\$40.12	1976	\$53.34

With the exception of Sale 5, all of the comparable properties are located in Iowa; however, like the vacant land sales, they were generally one-hundred or more miles from the subject property. Manternach explained this was because there were no recent sales of similar properties near Finders Keepers. He adjusted Sales 3 and 4 for being superior in location, but considered the remaining sales similar in overall location.

Finders Keepers questioned how Manternach considered and adjusted Sales 1 and 3, which are leased fee sales. He explained that the owner purchasing Sale 1 was going to use half the building with the remainder of the building under a short-term lease.

All of the sales were also adjusted for inferior condition, in part because they were older structures than the subject. After adjustments, the sales ranged from \$33.35 to \$53.34 per-square-foot. Manternach reconciled at \$41.00 per-square-foot, or \$545,000.

Lastly, Manternach developed the income approach to value. He relied on ten comparable leases from around the state of Iowa, in locations, which he asserted had similar appeal. He determined a market rent of \$5.00 per-square-foot or \$66,500 gross potential income. (Ex. D, p. 43). He deducted operating expenses, and vacancy/collection loss to arrive a net operating income (NOI) of \$51,117. (Ex. D, p. 46). He relied on a market sale (Sale 3 from the sales comparison analysis) as an indicator for the capitalization rate, as well as considering a mortgage equity analysis and investment bulletins. He concluded a loaded capitalization rate of 9.25%. His opinion of value by the income approach is \$553,000. (Ex. D, p. 48).

Manternach gave most consideration to the sales and income approaches to value, with some consideration to the cost approach. His final opinion of value, as of January 1, 2013, is \$550,000.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2013). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no

presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Finders Keepers submitted a Restricted Appraisal by Nick Dizona. Dizona argued the subject property continues to be impacted by the 2011 flood; however, we find no evidence to support this assertion. Furthermore, we reject Dizona's appraisal in its entirety. Dizona was aware that his report was to be submitted as evidence to this board. As such, he had an obligation to his client, Finders Keepers, to update his report to an Appraisal Report. However, he did not inform his client that a Restricted Appraisal was insufficient for this Board to rely on. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE 2014-2015 EDITION. U-21, lines 659-660. Moreover, Dizona's appraisal contains no rationale for his conclusions or any quantitative or qualitative adjustments to the sales he considered to arrive at his valuation. "If the distorting sale factors or the points of difference between the assessed property and the other property are not quantifiable so as to permit the required adjustments, the other property will not be considered comparable." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). Dizona failed to articulate what adjustments to each of the comparable properties were necessary and his appraisal does not include this information. We find Dizona's testimony unreliable and unpersuasive because the

restricted appraisal contains no data for this Board to review to determine whether the conclusion reached therefrom is reasonable or supported.

Finders Keepers also argues the restructured mortgage on the property should be considered as evidence of fair market value. (Brf. p. 5). This evidence, while perhaps indicating the property's situation in 2011 during the flood, bears little relevance to the 2013 value of the subject property after any flood damage had been repaired and the business was once again operational for approximately one year. Moreover, the restructured mortgage was clearly negotiated during a time of distress thus it should not be considered without accounting for this fact. § 441.21(1)(b)(1) (stating abnormal transactions should not be taken into account unless adjusted).

The Board of Review submitted an appraisal by Russ Manternach. Manternach developed all three approaches to value (sales, cost, and income) and concluded an opinion of \$550,000, as of January 1, 2013. Manternach testified he found no evidence to suggest the property was still impacted from the 2011 flooding. Additionally, while Manternach's chosen comparable sales and leases in his approaches are not located near the subject property, no other more reliable evidence in the record shows there are sales Manternach failed to use in his analysis or sales that would have been more comparable to the subject property. PAAB therefore finds Manternach's appraisal is the best evidence in the record and supports the claim that the subject property is over assessed; however, we find most reliance should be given to the sales comparison approach opinion of value. For this reason, we find the fair market value of the subject property, as of January 1, 2013, is \$545,000.

Order

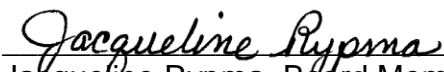
IT IS THEREFORE ORDERED the January 1, 2015, assessment of the subject property as set by the Board of Review is modified to \$545,000.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

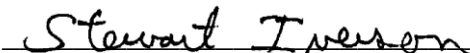
Dated this 18th day of December, 2015.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member



Stewart Iverson, Board Chair

CC:

Dan Manning

Brett Ryan

Joan Kirk